



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 10, 2003

Mr. Leonard Schneider
Attorney for the City of Mont Belvieu
Ross, Banks, May, Cron & Davin
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2003-0218

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#174242.

The City of Mont Belvieu (the "city"), which you represent, received a request for information that was subsequently clarified and narrowed into two parts. The first part of the request is for:

[F]inancial records involving the operation of Eagle Pointe Golf Club and Recreation Center. This should include but not be limited to salaries being paid, purchases that have been made, amount of money earned annually by the center each year that it has been open, and the total amount of money the City of Mont Belvieu pays each year to support the center. In addition, we would like to review the center's annual budgets for each year that it has been open.

The second part of the request was clarified and narrowed to include access to any records that will be made available to the Baytown Sun if they should prevail in their lawsuit against the city. You indicate that the city will make available to the requestor documents that it owns or maintains that are responsive to the first part of the request. You claim, however, that the city does not own or have a right of access to responsive information pertaining to the employees of the Eagle Pointe Golf Club and Recreation Center ("Eagle Pointe"). Furthermore, you state that, according to Open Records Letter No. 2002-2735 (2002), this information is not public information as defined by section 552.002 of the Government Code. With regard to the second part of the request, you argue that it is an unlawful continuing request. We have considered your arguments.

Initially, we note your assertion that certain documents responsive to the first part of the request were also at issue in an earlier ruling from this office, Open Records Letter No. 2002-2735 (2002). You inform us that the litigation at issue based on the earlier ruling is still ongoing. Accordingly, we are closing our file on this matter without a finding and will allow the trial court to resolve the issue of whether these records must be released to the requestor.

Next, we address your argument pertaining to the wording of the second part of the request. You claim that a request made contingent on a future event is a continuing request and that the city is not required to comply with such a request. We agree. The Act applies only to information that a governmental body possesses or has access to at the time it is requested.¹ Moreover, the Act does not require a governmental body to inform a requestor if the governmental body gains access to responsive information, or if responsive information comes into its possession after a request is made. Open Records Decision No. 452 at 3 (1986). Consequently, to the extent the present request asks that the city provide information that it did not possess or have access to when the request was made, or that the city supply information on a periodic basis that either comes into its possession or that it gains access to after the city's receipt of the present request, we conclude that the city is not required to comply. See Attorney General Opinion JM-48 at 2 (1983); Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987).

In summary, the city must make available documents responsive to the first part of the request that it owns, controls, or has the right of access to. With regard to the part of the request pertaining to the employees of Eagle Pointe, we will allow the trial court to resolve the issue of whether these records must be released to the requestor. Further, with regard to the second part of the request, the city is not required to comply with a continuing request to supply information as the city gains access to it, or as it comes into the city's possession.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

¹It is implicit in several provisions of the Act that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351.

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

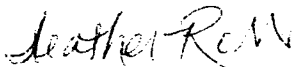
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Ross".

Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 174242

c: Ms. Cindy Horswell
Houston Chronicle
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(w/o enclosures)